

**Ketua Polis Negara & Anor v
Gan Bee Huat and other appeals**

SUPREME COURT (PULAU PINANG) — CRIMINAL APPEAL NOS 05-
183 OF 1992, 05-218 OF 1992, 05-226 OF 1992 AND 05-247 OF 1992
LAMIN PCA, MOHD AZMI AND ZAKARIA YATIM FCJJ
15 MAY 1998

Criminal Procedure — Forfeiture — Dangerous drugs — Seizure made in the presence of the owner — Whether notice of seizure under s 25 of the Dangerous Drugs (Forfeiture of Property) Act 1988 need to be served

Criminal Procedure — Forfeiture — Dangerous drugs — No prosecution with regard to property seized — Whether notice under s 9 of the Dangerous Drugs (Forfeiture of Property) Act 1988 to attend court to show cause why property should not be forfeited should be issued — Whether case was instead governed by s 32 which requires person claiming to be lawfully entitled to the properties seized to submit written claim to Public Prosecutor

There were four appeals in this case. The facts of the appeals are similar except with regard to the dates of the event. With respect to each appeal, the police from the Anti-Dadah Branch had entered and searched the premises of the respective respondents. In the course of the search, they had seized a number of items. Search lists were prepared and acknowledged by the respective respondents. Seizure of all the items appearing in the search lists was made in the presence of the respective respondents. There was no prosecution for any offence with regard to the property seized, nor was there any proceedings for forfeiture of the property. The respondents had also not made any claim in writing to be lawfully entitled to the properties seized. Counsel for the respondents filed a criminal application praying for an order that the seizure was unlawful as it was not done according to law and the property so seized must be returned to the respondents. The grounds for the applications were, inter alia: (i) no notice of seizure under s 25 of the Dangerous Drugs (Forfeiture of Property) Act 1988 ('the Act') had ever been served on the respondents; (ii) no notice under s 9 of the Act to attend court to show cause why all or any of the property should not be forfeited; and (iii) s 32 relied on by the prosecution to justify the forfeiture is inconsistent with art 13 of the Federal Constitution. As for issue (i), counsel for the respondents argued that notice would only be dispensed with if the 'seizure is made in the presence of the person against whom proceedings under Pt III are intended to be taken or in the presence of the owner'. In this case, he said, no proceedings under Pt III had been taken against any of his clients. With regard to issue (ii), the deputy public prosecutor submitted that the issuance of a notice under s 9 did not arise because the cases were in fact governed by s 32 of the Act. The learned judicial commissioner declared that the seizure was not done according to law and therefore illegal. He ordered that the property be returned to the respective respondents.

A **Held**, allowing the appeals:

- B** (1) In the case of a seizure made in the presence of the owner of the affected property, the question of taking up any proceedings under Pt III against him does not arise because he is excluded as he comes in the second limb of the proviso. For the purpose of the operation of the proviso in regard to the meaning of the word 'owner', an admission in the various affidavits in support of the applications that resulted in the judicial commissioner's orders could be relied upon. The admission was to the effect that premises where searches and seizures took place belonged to the respondents. All four cases fell squarely within the proviso which stipulates that such notice shall not be required to be served where the seizure is made in the presence of the owner (see p 92F-H).
- C**
- D** (2) Section 32(1) provides, inter alia, that if it is shown that no action as described in para (a), (b) or (c) of s 32(1) has been taken with regard to the property already seized within three months from the date of seizure, the property shall become forfeited immediately upon the expiration of the said period. In this case, as the Public Prosecutor had opted *not* to make an application for an order of forfeiture under s 8(1) (this satisfied para (b) of s 32(1)), and no prosecution under any law had been instituted with regard to the properties seized (fulfilling para (a) of s 32(1)), the Public Prosecutor had in fact availed himself of the benefit of s 32(1)(c). Paragraph (c) provides that if a claim in writing is made to the Public Prosecutor within the said period of three months to the effect that he is lawfully entitled to the property and that the property is not liable to forfeiture, it is incumbent on the part of the Public Prosecutor to refer the claim to the sessions court for its decision. The sessions court shall then require the appearance of the person claiming, and shall proceed to ascertain whether an offence has been committed in respect of the property. If no such offence has been committed, the court shall release the property to the person making the claim upon proof. Until the day of the hearing of the four appeals, none of the respondents had made any claim. In the circumstances, the court had to draw the inevitable conclusion that the respondents had no reason whatsoever valid or otherwise to explain their failure to make the claim. Thus para (c) of sub-s (1) was satisfied (see pp 93G-H, 94F-I and 95A-D).
- E**
- F**
- G**
- H**
- I** (3) The Act was enacted by Parliament in pursuance of art 149 of the Federal Constitution. Even assuming therefore that s 32 is found to be inconsistent with art 13, by the express authority of art 149(1), the section shall remain valid. In other words, s 32 cannot be challenged on the ground that it is inconsistent with art 13 of the Federal Constitution (see p 96A-B, G).

[Bahasa Malaysia summary]

Terdapat empat rayuan dalam kes ini. Fakta-fakta rayuan tersebut adalah sama melainkan berhubung dengan tarikh-tarikh peristiwa. Berhubung setiap satu rayuan, polis dari Cawangan Anti-Dadah telah memasuki dan menggeledah premis penentang-penentang masing-masing. Dalam pengeledahan tersebut, mereka telah menyita beberapa perkara. Senarai geledah telah disediakan dan diakui oleh penentang-penentang masing-masing. Penyitaan akan kesemua perkara yang terdapat dalam senarai geledah tersebut telah dibuat dalam kehadiran penentang-penentang masing-masing. Tidak terdapat pendakwaan bagi mana-mana kesalahan berhubung dengan harta yang disita, dan tidak juga terdapat sebarang prosiding untuk perlucuthakan harta tersebut. Penentang-penentang juga telah tidak membuat sebarang tuntutan bertulis untuk berhak secara sah di sisi undang-undang kepada harta-harta yang disita itu. Peguam penentang-penentang telah memfailkan satu permohonan jenayah memohon untuk mendapatkan perintah bahawa penyitaan itu adalah tidak sah kerana ia tidak dilakukan menurut undang-undang dan harta yang disita sedemikian mestilah dikembalikan kepada penentang-penentang. Alasan-alasan bagi permohonan tersebut adalah, antara lain: (i) tiada notis penyitaan di bawah s 25 Akta Dadah Berbahaya (Perlucuthakan Harta) 1988 ('Akta tersebut') pernah disampaikan ke atas penentang-penentang; (ii) tidak terdapat notis di bawah s 9 Akta tersebut untuk menghadiri di mahkamah bagi menunjuk sebab mengapa kesemua atau mana-mana daripada harta tersebut tidak seharusnya dilucuthakkan; dan (iii) s 32 terhadap mana pihak pendakwaan bergantung kepada untuk memberi justifikasi perlucuthakan adalah tidak konsisten dengan perkara 13 Perlembagaan Persekutuan. Berhubung dengan isu (i), peguam penentang-penentang berhujah bahawa notis akan hanya diketepikan sekiranya 'penyitaan dilakukan dalam kehadiran orang terhadap mana prosiding di bawah bawah Bah III bertujuan diambil atau dalam kehadiran tuan punya'. Dalam kes ini, beliau berkata, tiada prosiding di bawah Bah III telah diambil terhadap mana-mana daripada kliennya. Berhubung isu (ii), timbalan pendakwa raya berhujah bahawa pengeluaran satu notis di bawah s 9 tidak berbangkit kerana kes-kes tersebut pada hakikatnya dikuasai oleh s 32 Akta tersebut. Pesuruhjaya kehakiman yang arif mengisytiharkan bahawa penyitaan tersebut telah tidak dilakukan menurut undang-undang dan dengan itu adalah tak sah. Beliau memerintah supaya harta tersebut dikembalikan kepada penentang-penentang masing-masing.

Diputuskan, membenarkan rayuan-rayuan:

- (1) Dalam kes penyitaan yang dibuat dalam kehadiran tuan punya harta yang terjejas itu, persoalan memulakan sebarang prosiding di bawah Bah III terhadap beliau tidak berbangkit kerana beliau dikecualikan oleh kerana beliau terlingkung dalam bahagian kedua proviso tersebut. Bagi tujuan pengendalian proviso tersebut berhubung dengan maksud perkataan 'tuan punya', ia boleh

- A bergantung kepada pengakuan dalam pelbagai affidavit-afidavit sokongan permohonan-permohonan yang mengakibatkan perintah-perintah oleh pesuruhjaya kehakiman. Pengakuan tersebut adalah berkuatkuasa bagi premis-premis di mana penggeledahan dan penyitaan itu berlaku adalah kepunyaan penentang-penentang. Keempat-empat kes tersebut terlingkung
- B dalam proviso yang menetapkan bahawa notis yang sedemikian tidak perlu disampaikan di mana penyitaan itu dilakukan dalam kehadiran tuan punya tersebut (lihat ms 92F-H).
- (2) Seksyen 32(1) memperuntukkan, antara lain, bahawa jika ditunjukkan tiada tindakan sepertimana yang diterangkan dalam
- C perenggan (a), (b) atau (c) s 32(1) telah diambil berhubung dengan harta yang telah pun disita dalam tempoh tiga bulan daripada tarikh penyitaan, harta tersebut akan segera dilucuthak setelah luput tempoh tersebut. Dalam kes ini, oleh kerana Pendakwa Raya telah memilih untuk *tidak* membuat satu permohonan bagi mendapatkan perintah perlucuthakan di bawah
- D s 8(1) (ini telah memenuhi perenggan (b) s 32(1)), dan tiada pendakwaan di bawah mana-mana undang-undang telah dimulakan berhubung harta yang telah disita itu (memenuhi perenggan (a) s 32(1)), Pendakwa Raya pada hakikatnya menggunakan untuk dirinya sendiri kepentingan s 32(1)(c).
- E Perenggan (c) memperuntukkan bahawa jika sesuatu tuntutan bertulis dibuat kepada Pendakwa Raya dalam tempoh tiga bulan tersebut, yang memberi kesan bahawa beliau adalah berhak di sisi undang-undang kepada harta tersebut dan bahawa harta itu tidak boleh dilucuthak, adalah merupakan kewajipan Pendakwa
- F Raya untuk merujuk tuntutan tersebut kepada mahkamah sesyen untuk keputusannya. Mahkamah sesyen kemudian akan menghendaki kehadiran orang yang membuat tuntutan itu, dan akan terus menentukan sama ada satu kesalahan telah dilakukan berhubung dengan harta tersebut. Jika tiada kesalahan sedemikian telah dilakukan, mahkamah akan melepaskan harta tersebut
- G kepada orang yang membuat tuntutan itu setelah adanya bukti. Sehingga hari perbicaraan keempat-empat penentang, tidak satu pun daripada mereka telah membuat tuntutan. Dalam sebarang keadaan, mahkamah terpaksa membuat keputusan yang tidak dapat dielakkan bahawa penentang-penentang tidak mempunyai sebab apa pun yang sah atau sebaliknya untuk memperjelaskan kegagalan mereka untuk membuat tuntutan. Dengan itu, sub-s (1)(c) dipenuhi (lihat ms 93G-H, 94F-I dan 95A-D).
- H
- (3) Akta tersebut telah digubal oleh Parlimen menurut perkara 149 Perlembagaan Persekutuan. Walaupun dengan tanggapan bahawa s 32 didapati tidak konsisten dengan perkara 13, melalui kuasa nyata perkara 149(1), seksyen itu akan terus sah. Dalam ertikata yang lain, s 32 tidak boleh dicabar atas alasan bahawa ia tidak konsisten dengan perkara 13 Perlembagaan Persekutuan tersebut (lihat ms 96A-B, G).]
- I

Notes

For cases on forfeiture in dangerous drugs cases, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1292-1307.

Case referred to

PP v Lau Kee Hoo [1983] 1 MLJ 157 (refd)

Legislation referred to

Dangerous Drugs (Forfeiture of Property) Act 1988 ss 8, (1), 9, (1), 16, 25, (2), 32(1), (a)-(c), (2), Pt III

Federal Constitution arts 4(1), 13, 149(1)

Internal Security Act 1960

Appeal from: Criminal Application Nos 44-53 of 1991, 44-107 of 1991, 44-156 of 1991 and 44-140 of 1991 (High Court, Pulau Pinang)

Mohd Yusof bin Zainal Abidin (Deputy Public Prosecutor) for the appellant.

Shanmugam (Shanmugam & Co) for the respondents.

Lamin PCA (delivering judgment of the court): We heard these four appeals at our sitting in Pulau Pinang on 13 April 1998. We allowed them and quashed the orders of the learned judicial commissioner made on 4 July 1992, which declared that the seizure made by the police in respect of the property described therein was not done according to law and therefore illegal. He ordered that the property be returned to the respective applicants/respondents. In substitute, we made the order of forfeiture of the affected property as required under s 32(1) of the Dangerous Drugs (Forfeiture of Property) Act 1988 ('the Act'). We shall explain the full effect of the said section and indicate the items of property to be forfeited in our present judgment.

For the purpose of arguing the appeals, it was agreed for reasons of convenience between the learned deputy public prosecutor and learned counsel for the respondents that Appeal No 4 (05-247-92) would be treated as the main appeal as the facts in the other three appeals were no different except as to dates where similar actions were taken by the police.

In Appeal No 4, on 8 April 1989 the police entered and searched the premises of the respondent. In the course of the search, the police from the Anti-Dadah Branch seized a number of items as follows: (a) notes amounting to RM43,000 wrapped in a Chinese newspaper found in a wardrobe; (b) notes amounting to RM65,000 kept in a Milo tin found in a compartment of a bed in the respondent's bedroom; (c) notes amounting to RM1,544 found in a pocket of a pair of trousers; (d) a motor-car driving licence of the respondent; (e) an international passport No A3276690 in the name of the respondent found in a drawer of a writing table; and (f) a motor-car, a Honda Accord registration No BCF 6231, found just outside the house. Search lists were prepared and acknowledged by the respondent by putting his signature on them. Of course, as we have indicated earlier,

- A similar actions were taken by the Anti-Dadah Branch of the police in the other three cases though on different dates. But for the purpose of seizure at the premises, search lists were prepared and similarly acknowledged by the respective respondents. In this regard, the learned deputy public prosecutor informed the court that the seizures of all the items appearing in the search lists in respect of the four cases were made in the presence of all the respondents. Learned counsel for the respondents agreed.

- On 11 June 1991, counsel for the respondent in the Appeal No 4 filed a criminal application praying for an order that the seizure was unlawful as it was done not according to law and the property so seized must be returned to the applicants. Similar applications were filed by the same counsel in respect of the other cases. All the four applications were heard at the same time and on the same day (4 July 1992) and order in terms was granted in respect of each of them.

- We were told, however, that the property had not been returned to the respondents as ordered because of the pending appeal and were still with the police.

For the purpose of making the aforesaid applications, the respondents in their affidavits had four main complaints against the actions taken by the police, namely:

- (a) No search list in respect of the items seized under s 16 of the Act;
- (b) No notice of seizure under s 25 of the Act had ever been served on the respondents;
- (c) No notice under s 9 of the Act to attend the High Court to show cause why all or any of the property should not be forfeited; and
- (d) Section 32 is inconsistent with art 13 of the Federal Constitution.

With regard to the first complaint, no further argument need be pursued because search lists had been prepared and properly acknowledged by the respondents.

The second complaint has absolutely no foundation. Section 25 reads:

G Seizure of movable property

- (1) Any movable property which a senior police officer reasonably suspects to be the subject matter of an offence under this Act, or which has been used for the commission of that offence, or illegal property, shall be liable to seizure.
- (2) Whenever any movable property is seized under subsection (1), the officer effecting the seizure shall as soon as practicable serve a notice in writing of such seizure and the grounds thereof on the owner of such property, if such owner and his whereabouts are known:

Provided that such notice shall not be required to be served where such seizure is made in the presence of the person against whom proceedings under Part III are intended to be taken, or in the presence of the owner of such property or his agent, or in the case of a ship or an aircraft, in the presence of the master or pilot, as the case may be.

- (3) Subsection (1) shall not apply to any ship of more than one hundred tons burden, or to any train or to any aircraft, belonging to any person carrying on a regular lawful passenger or freight service within Malaysia

or to and from Malaysia, except where prosecution for an offence under this Act is to be instituted, or proceedings under Part III are to be taken, against the owner of such ship, train or aircraft.

It may be recalled that learned counsel for the respondents agreed with the learned deputy public prosecutor that the affected property in the four cases were seized in the presence of his clients, the respondents. But he said that the proviso to s 25(2) provides that the notice would only be dispensed with if the 'seizure is made in the presence of the person against whom proceedings under Pt III are intended to be taken or in the presence of the owner'. He said no proceedings under Pt III has been taken against any of his clients. In our view, if any positive action is to be taken under Part III, it would be one under ss 8 and 9 of the Act, the operation of which we shall soon explain when we deal with the third complaint. However, we need only say at this juncture that the reading of s 8(1) would appear to suggest that the Public Prosecutor has the discretion whether or not to make the ex parte application. Under the proviso to s 25(2), the intention to take up any proceedings under Pt III may exist at the time when there is a decision to investigate with the view to conduct a search by the police. But upon completion of an investigation and a search by the police culminating in a seizure, the final decision as to what steps to take thereafter, in particular those spelt out in ss 8 and 9, would be that of the Public Prosecutor. If the Public Prosecutor does not move under the provisions of Pt III, the matter of seizure ends there until s 32 becomes operative. We shall deal with the operation of s 32 in the later part of our judgment.

The court also asked learned counsel for the respondents for his view in the case where the seizure is made in the presence of the owner of the property. He was unable to assist us. In the case of a seizure made in the presence of the owner of the affected property, the question of taking up any proceedings under Pt III against him does not arise because he is excluded as he comes in the second limb of the proviso. For the purpose of the operation of the proviso in regard to the meaning of the word 'owner', we are of the view that an admission in the various affidavits in support of the applications that resulted in the judicial commissioner's orders of 4 July 1992 can be relied upon. The admission was to the effect that premises where searches and seizures took place belonged to the respondents. So also was the admission in regard to the affected property. All the four cases fall squarely within the proviso which stipulates that such notice shall not be required to be served where the seizure is made in the presence of the owner.

As to the third complaint, the learned deputy public prosecutor submitted that the issuance of a notice under s 9 did not arise because his contention was that the cases were in fact governed by s 32 of the Act. Now, for the notice to issue under s 9, there must first be an ex parte application made before the High Court by the Public Prosecutor under s 8 for an order of forfeiture of any property in possession of any person whom he 'has reason to believe' that the person is a liable person and the property is an illegal property. For ease of reference, we reproduce the relevant provisions of the Act in this regard, namely ss 8(1), (2) and 9(1).

A They read:

8 Application to the High Court

(1) If the Public Prosecutor has reason to believe that any person is a liable person he may apply *ex parte* to the High Court for an order of forfeiture of all the properties of which such person is a holder and which the Public Prosecutor has reason to believe are illegal properties.

B

(2) The application, supported by an affidavit or affidavits, shall —

(a) identify the liable person to be proceeded against, state his address of residence or business, if known, and other relevant particulars, which are known;

C

(b) state the grounds on which he is a liable person;

(c) identify the properties to be forfeited, set out their estimated value, and, if known, their location; and

(d) state any other matters, circumstance or information which, in the opinion of the Public Prosecutor, is relevant to the application.

D

9 Notice to show cause against forfeiture

(1) If at the hearing of the application of the Public Prosecutor under section 8(1), the High Court is satisfied that the application is made in accordance with the requirements of section 8, the Court shall issue a notice upon the liable person specified in the application (hereinafter in this Act referred to as the 'person affected') and annexing thereto the affidavit or affidavits referred to in section 8(2), and calling upon the person affected to attend before the High Court on a date specified in the notice, which shall not be less than thirty days from the date of the notice, to show cause why all or any of the properties identified under section 8(2)(c), should not be forfeited.

E**F**

Upon being satisfied on the *ex parte* application, the High Court will then issue a notice to the 'liable person' calling him to attend before the said High Court on a date specified in the notice to show cause why the property as identified under s 8(2) should not be forfeited.

G

As we understand the law, the Public Prosecutor may or may not take the option to make the application under s 8(1). It is entirely at his discretion. In the cases before us, he opted *not* to make the application. In our view, this has satisfied para (b) of sub-s (1) of s 32. At this point, we should mention that as a fact no prosecution under any law has been instituted with regard to the property seized. Therefore, the condition as required under para (a) of sub-s (1) of s 32 has been fulfilled. As a result, he availed himself of the benefit of s 32(1)(c). To appreciate fully the operation of s 32(1)(c), perhaps we need to reproduce only sub-ss (1), (2) and (3) of the said section which read:

H**I**

Forfeiture of property seized under this Act where there is no prosecution, or no proceedings under Part III or no claim thereto.

(1) Where any property has been seized under this Act, other than under or by virtue of Part VII, and —

- (a) no prosecution for any offence under any law is instituted with regard to such property; A
 - (b) no proceedings are commenced by the Public Prosecutor for the forfeiture of such property under Part III; and
 - (c) no claim in writing is made by any person that he is lawfully entitled to such property and that it is not liable to forfeiture under this Act or under the Dangerous Drugs Act 1952, B
- within three months from the date of its seizure, the property shall become forfeited immediately upon the expiration of the said period of three months.
- (2) Where within three months from the date of the seizure of any property under this Act, a claim in writing is made thereto by any person in the terms mentioned in paragraph (c) of subsection (1), the Public Prosecutor shall within fourteen days after the expiry of the said period of three months, refer such claim to a Sessions Court for its decision. C
 - (3) The Sessions Court to which a claim is referred under subsection (2) shall issue a summons requiring the person claiming that he is lawfully entitled to the property, and the person from whom it was seized, if he and his whereabouts are known, to appear before the court and upon such appearance or in default of such appearance, upon due service of such summons being proved, the Sessions Court shall proceed to the examination of the matter and if satisfied that no offence under this Act or under the Dangerous Drugs Act 1952 has been committed in respect of the property claimed and that such property is not illegal property, shall order the same to be released to the person claiming the same upon proof that he is lawfully entitled thereto, and shall, in any other case, order the property to be forfeited. D

In the cases before us, if it is shown that no action as described in para (a), (b) or (c) of sub-s (1) of s 32 has been taken with regard to the property already seized within three months from the date of seizure, the property shall become forfeited immediately upon the expiration of the said period. We have however mentioned earlier that no action as described in either para (a) or (b) of sub-s (1) has been taken. But para (c) requires that if a claim in writing is made to the Public Prosecutor or the police at any time within the said period of three months to the effect that he is lawfully entitled to the property and that the property is not liable to forfeiture, it is incumbent on the part of the Public Prosecutor to refer the claim to the sessions court within 14 days after the expiration of the said period of three months for its decision (sub-s (2)). Upon receipt of the Public Prosecutor's reference, the sessions court shall then issue a summons requiring the person claiming to appear and upon appearance, the court shall proceed with the inquiry with the view to ascertain, to its satisfaction, whether an offence under the Act or under the Dangerous Drugs Act 1952 has been committed in respect of the property. If no such offence has been committed and the property is not an illegal property within the meaning of the Act, the court shall release the property to the person making the claim upon proof that he is entitled thereto. In any other case, the court shall order the property to be forfeited (sub-s (3)). Until the day of the hearing of the four appeals by us (a period of eight to nine years from the date or dates of seizure), none of the respondents has made any claim. Their counsel E

- A** submitted that there was no way for the respondent to make the claim because soon after he was arrested by the police on 8 April 1989, he was further detained at Pulau Jerejak for two years commencing from 5 June 1989. However, learned counsel admitted that he did visit the respondent (in Appeal Case No 4) at Pulau Jerejak but he could not remember when.
- B** However, none of the respondents has filed an affidavit deposing that he or his counsel had made an attempt if at all, and when, to file a claim in writing as required by s 32(2) of the Act giving detailed explanation as to why he could not make the claim to the police or the Public Prosecutor. Neither was there an affidavit forthcoming from learned counsel to state whether he had made attempts to seek the assistance of the relevant
- C** authorities such as the police to allow him to interview any of the respondents while in police custody or wherever detained in order to get instructions regarding the making of the claim under s 32(2). In the circumstances, we have to draw the inevitable conclusion that the respondents had no reason whatsoever valid or otherwise to explain their failure to make the claim. Thus para (c) of sub-s (1) is satisfied. The learned deputy public prosecutor
- D** then indicated to the court the property that would be affected by the forfeiture should the court allow the appeals. They are the following:

Appeal No 1 — Rayuan Jenayah 05-183-92

- E** Items affected as are numbered on the search list appearing from pp 8 to 9 of the appeal record — Nos 1, 2, 3, 4, 6, 7, 9, 12, 15, 18, 19 and 20.

Appeal No 2 — Rayuan Jenayah 05-218-92

- F** Items affected as are numbered on the search list appearing from pp 15 to 16 of the Appeal Record— Nos 3.2, 3.3, 5, 6, 7, 8, 9 and 11.

Appeal No 3 — Rayuan Jenayah 05-226-92

- G** Items affected as are numbered on the search list appearing on p 16 of the appeal record — Nos 1, 2, 3 and 7.

Appeal No 4 — Rayuan Jenayah 05-247-92

- H** Items affected as are numbered on the search list appearing from pp 11 to 13 of the appeal record — Nos 1 and 3 (p 11), No 1 (p 12) and No 1 (p 13).

Those not affected by the forfeiture are to be returned to the respondents. Since none of the circumstances mentioned under paras (a), (b) and (c) of sub-s (1) of the said s 32 has taken place within three months from the date of seizure of the property affected, forfeiture automatically takes effect.

- I** Our order was merely to formalize the incidence of forfeiture as directed by the statute.

Now the fourth and the last complaint was in fact, as submitted by learned counsel for the respondent, the main thrust of his argument. According to him, s 32 of the Act is inconsistent with art 13 of the Federal

Constitution and therefore by virtue of art 4(1), it is to that extent void. We fail to see how his submission can legally be supported for it is really a non-starter. The Dangerous Drugs (Forfeiture of Property) Act 1988 was enacted by Parliament in pursuance of art 149 of the Federal Constitution. Articles 13 and 149(1) read:

13 (1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

149 (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation —

(a) to cause, or to cause a substantial number of citizens to fear, organized violence against persons or property; or

(b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or

(c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or

(d) to procure the alteration, otherwise than by lawful means, of anything by law established; or

(e) which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or

(f) which is prejudicial to public order in, or the security of, the Federation or any part thereof,

any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Article 5, 9, 10 or 13, or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill. (Emphasis added.)

Even assuming therefore that s 32 is found to be inconsistent with art 13, by the express authority of art 149(1), the said section shall remain valid. In other words, s 32 cannot be challenged on the ground that it is inconsistent with art 13 of the Federal Constitution.

In this connection, we need only recall the words of Suffian LP (as he then was) when delivering the judgment of the Federal Court in the case of *PP v Lau Kee Hoo* [1983] 1 MLJ 157 at p 159 on the constitutionality of the Internal Security Act 1960 thus:

The ISA is legislation against subversion expressly authorized by art 149 of the Constitution. Mr Karpal Singh conceded that the Act was constitutional; that being so we cannot see how it can be said that the impugned section is invalid as being contrary to art 5(1); because the article itself expressly provides that any provision of law enacted under the article is valid 'notwithstanding that it is inconsistent with art 5'.

Appeals allowed.